

Kevin Laukaitis\*  
Jonathan Shub (SBN 237708)  
**SHUB LAW FIRM LLC**  
134 Kings Highway E, 2nd Floor  
Haddonfield, NJ 08033  
T: 856-772-7200  
F: 856-210-9088  
[klaukaitis@shublawyers.com](mailto:klaukaitis@shublawyers.com)  
[jshub@shublawyers.com](mailto:jshub@shublawyers.com)

*Attorneys for Plaintiff and the Class*

[Additional counsel listed on signature page]

**UNITED STATES DISTRICT COURT**

# **NORTHERN DISTRICT OF CALIFORNIA**

JEANNE MATTHEWS, individually and  
on behalf of all others similarly situated,

Case No.:

**Plaintiff,**

## **CLASS ACTION COMPLAINT**

V.

## JURY TRIAL DEMANDED

## MORTON & BASSETT SPICES.

## Defendant

# **CLASS ACTION COMPLAINT**

Plaintiff, Jeanne Matthews (“**Plaintiff**”), on behalf of herself and all others similarly situated, brings this class action against Defendant, Morton & Bassett Spices, (“**Defendant**” or “**Morton & Bassett**”), and alleges on personal knowledge, investigation of her counsel, and on information and belief as follows:

## **INTRODUCTION**

1. This is a consumer class action brought individually by Plaintiff and on behalf of all persons in the below-defined proposed Classes, all of whom purchased one or more spices manufactured by Defendant.<sup>1</sup>

2. Defendant is one of the premier manufacturers and distributors of spices and seasonings in the United States.

3. Since 1986, Defendant has offered a diverse range of spices and seasonings.

4. Defendant touts itself as a company that cares for the quality of its products and the well-being of its customers. Through representations on the website, Defendant guarantees “Our top priority has always been food safety” and

<sup>1</sup> The purchased products include, but are not limited to Morton & Bassett-branded: basil, ground ginger, ground thyme, and ground turmeric (the “Spices.”). Plaintiff reserves the right to amend the Complaint to include/revise the list of products subject to this Complaint.

details the steps it takes to “ensure product cleanliness and safety for our customers.”<sup>2</sup>

5. Unbeknown to Plaintiff and members of the proposed Classes, and contrary to the representations on the Spices' label, the Products contain heavy metals, including arsenic, cadmium, and lead at levels above what is considered safe for children and adults, which, if disclosed to Plaintiff and members of the proposed Classes prior to purchase, would have caused Plaintiff and members of the proposed Classes not to purchase or consume the Spices.

6. Tellingly, Defendant does not list heavy metals as an ingredient on the Spices' label nor does it warn of the potential presence of heavy metals in its Spices.

7. As a result, the Spices' labeling is deceptive and misleading.

8. Plaintiff and the members of the proposed Classes, as defined below, thus bring claims for consumer fraud and seek damages, injunctive and declaratory relief, interest, costs, and attorneys' fees.

## THE PARTIES

9. Plaintiff is a resident and citizen of the State of Illinois, residing in Evanston, Illinois and is a member of the proposed Classes defined herein. She purchased various Spices in Illinois during the applicable statutory period.

<sup>2</sup> <https://mortonbassett.com/pages/about-morton-bassett> (last accessed Jan. 21, 2022).

1        10. Defendant Morton & Bassett Spices is a California corporation, with  
2 its principal place of business at 1400 Valley House Drive, Suite 100  
3 Rohnert Park, CA 94928. As such, Defendant is a resident and citizen of California.

## **JURISDICTION AND VENUE**

6       11. This Court has personal jurisdiction over Defendant in this matter.  
7  
8       The acts and omissions giving rise to this action occurred in the state of California.  
9  
10      Defendant has been afforded due process because it has, at all times relevant to this  
11     matter, individually or through its agents, subsidiaries, officers and/or  
12     representatives, operated, conducted, engaged in and carried on a business venture  
13     in this state and/or maintained an office or agency in this state, and/or marketed,  
14     advertised, distributed and/or sold products, committed a statutory violation within  
15     this state related to the allegations made herein, and caused injuries to Plaintiff and  
16     putative Class Members, which arose out of the acts and omissions that occurred  
17     in the state of California, during the relevant time period, at which time Defendant  
18     were engaged in business activities in the state of California.  
19

21       12. This Court has subject matter jurisdiction over this matter pursuant to  
22 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are  
23 100 or more putative Class Members, (ii) the aggregate amount in controversy  
24 exceeds \$5,000,000, exclusive of interest and costs, and (iii) there is minimal  
25 diversity because at least one Plaintiff and Defendant are citizens of different  
26

states. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337.

13. Pursuant to 28 U.S.C. § 1391(a), venue is proper because a substantial part of the events giving rise to the claims asserted occurred in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because Defendant conducts substantial business in this District, is headquartered in this District, has sufficient minimum contacts with this District, and otherwise purposely avails itself of the markets in this District, through the promotion, sale, and marketing of the Products in this District.

## **FACTS COMMON TO ALL CLASS MEMBERS**

14. Defendant manufactures, distributes, promotes, offers for sale, and sells the Spices, both in the past and currently. Defendant has advertised and continues to advertise the Products through television commercials, print advertisements, point-of-sale displays, product packaging, Internet advertisements, and other promotional materials.

15. An investigation by known consumer-advocacy group Consumer Reports revealed that Spices manufactured by Defendant contain “potentially dangerous heavy metals:”<sup>3</sup>

<sup>3</sup> <https://www.consumerreports.org/food-safety/your-herbs-and-spices-might-contain-arsenic-cadmium-and-lead/#tests> (last accessed January 21, 2022)

1           “Roughly one-third of the tested products, 40 in total, had  
 2           high enough levels of arsenic, lead, and cadmium  
 3           combined, on average, to pose a health concern for  
 4           children when regularly consumed in typical serving sizes.  
 5           Most raised concern for adults, too.”<sup>4</sup>

6           16. Exposure to heavy metals causes permanent decreases in IQ,  
 7           diminished future economic productivity, and increased risk of future criminal and  
 8           antisocial behavior in children. Toxic heavy metals endanger infant neurological  
 9           development and long-term brain function. Lead and arsenic are heavy metals  
 10          known to cause a wide spectrum of adverse outcomes in pregnancy such as  
 11          abortions, retarded growth at the intrauterine cavity, skeletal deformities,  
 12          malformations and retarded development especially of the nervous system.<sup>5</sup>

13           17. Young children are particularly vulnerable to lead because the  
 14          physical and behavioral effects of lead occur at lower exposure levels in children  
 15          than in adults. A dose of lead that would have little effect on an adult can have a  
 16          significant effect on a child. In children, low levels of exposure have been linked  
 17          to damage to the central and peripheral nervous system, learning disabilities,  
 18          shorter stature, impaired hearing, and impaired formation and function of blood  
 19          cells.<sup>6</sup>

---

20  
 21  
 22  
 23  
 24  
 25  
 26           <sup>4</sup> *Id.*  
 27           <sup>5</sup> *Id.*  
 28           <sup>6</sup> See <https://www.cdc.gov/nceh/lead/prevention/pregnant.htm>.

18. EPA has set the maximum contaminant level goal for lead in drinking water at zero because lead is a toxic metal that can be harmful to human health even at low exposure levels. Lead is persistent, and it can bioaccumulate in the body over time.<sup>7</sup>

19. The Agency for Toxic Substances and Disease Registry states that there may be no threshold for lead with regards to developmental impact on children. "In other words there are no safe limits for [lead]."<sup>8</sup>

**FED. R. CIV. P. 9(b) ALLEGATIONS**

20. Rule 9(b) of the Federal Rules of Civil Procedure provided that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” To the extent necessary, as detailed in the paragraphs above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing the following elements with sufficient particularity.

21. **WHO:** Defendant made material misrepresentations and/or omissions of fact in its labeling and marketing of the Spices by misrepresenting those Spices' composition and/or omitting the presence of heavy metals.

<sup>7</sup> See <https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water>.

<sup>8</sup> G. Schwalfenberg, I. Rodushkin, S.J. Genuis, "Heavy metal contamination of prenatal vitamins," *Toxicology Reports* 5 at 392 (2018).

1       22. **WHAT:** Defendant's conduct here was and continues to be fraudulent  
2 because it has the effect of deceiving consumers into believing that the Spices do  
3 not contain heavy metals. Defendant omitted from Plaintiff and Class Members  
4 that the Spices contain heavy metals. Defendant knew or should have known this  
5 information is material to all reasonable consumers and impacts consumers'  
6 purchasing decisions. Yet, Defendant has and continues to represent that the Spices  
7 are of a composition not containing heavy metals when they do contain heavy  
8 metals, and has omitted from the Spices' labeling the fact that they contain heavy  
9 metals.

12       23. **WHEN:** Defendant made material misrepresentations and/or  
13 omissions detailed herein, including that the Spices do not contain heavy metals,  
14 continuously throughout the applicable Class period(s).

16       24. **WHERE:** Defendant's material misrepresentations and omissions,  
17 that the Spices do not contain heavy metals, were made on the front labeling and  
18 packaging of the Products and throughout Defendant's advertising. Defendant's  
19 representations and omissions were viewed by every purchaser, including Plaintiff,  
20 at the point of sale in every transaction. The Spices are sold worldwide in brick-  
21 and-mortar stores and online store nationwide.

24       25. **HOW:** Defendant omitted from the Spices' labeling the fact that they  
25 contain heavy metals. And as discussed in detail throughout this Complaint,

Plaintiff and Class Members read and relied on Defendant's front-label representations and omissions before purchasing the Spices.

26. **WHY:** Defendant misrepresented its Spices are not containing heavy metals and omitted from the Spices' labeling the fact that they do contain heavy metals for the express purpose of inducing Plaintiff and Class Members to purchase the Spices at a substantial price premium. As such, Defendant profited by selling the misrepresented Spices to at least thousands of consumers throughout the nation.

## **CLASS ACTION ALLEGATIONS**

27. Plaintiff brings this action individually and on behalf of all other persons similarly situated pursuant to Federal Rule of Civil Procedure 23. The class definition(s) may depend on the information obtained throughout discovery. Notwithstanding, at this time, Plaintiff brings this action and seeks certification of the following proposed Classes:

**National Class:** All persons within the United States who purchased and consumed the Spices from the beginning of any applicable limitations period through the date of class certification.

Plaintiff also brings this action on behalf of the following State  
Sub-Class:

**Illinois Sub-Class:** All persons in the State of Illinois who purchased and consumed the Spices from the beginning of any applicable limitations period through the date of class certification.

1       28. Excluded from the proposed Classes are the Defendant, and any  
2 entities in which the Defendant has controlling interest, the Defendant's agents,  
3 employees and its legal representatives, any Judge to whom this action is assigned  
4 and any member of such Judge's staff and immediate family, and Plaintiff's  
5 counsel, their staff members, and their immediate family.

6  
7       29. Plaintiff reserves the right to amend the definition of the Classes if  
8 discovery or further investigation reveals that the Classes should be expanded or  
9 otherwise modified.

10  
11      30. Certification of Plaintiff's claims for class-wide treatment is  
12 appropriate because Plaintiff can prove the elements of her claims on a class-wide  
13 basis using the same evidence as would be used to prove those elements in  
14 individual actions alleging the same claims.

15  
16      31. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** Class  
17 Members are so numerous and geographically dispersed that joinder of all Class  
18 Members is impracticable. While the exact number of Class Members remains  
19 unknown at this time, upon information and belief, there are thousands, if not  
20 hundreds of thousands, of putative Class Members. Moreover, the number of  
21 members of the Classes may be ascertained from Defendant's books and records.  
22 Class Members may be notified of the pendency of this action by mail and/or  
23  
24  
25  
26  
27  
28

electronic mail, which can be supplemented if deemed necessary or appropriate by the Court with published notice.

**32. Predominance of Common Questions of Law and Fact – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class Members and predominate over any questions affecting only individual Class Members. These common legal and factual questions include, but are limited to, the following:

- a. Whether the Spices contain dangerous levels of heavy metals;
  - b. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Spices are deceptive;
  - c. Whether Defendant's actions violate the state consumer fraud statutes invoked below;
  - d. Whether Defendant's actions constitute common law fraud;
  - e. Whether Plaintiff and Members of the Classes were damaged by Defendant's conduct;
  - f. Whether Defendant was unjustly enriched at the expense of Plaintiff and Class Members; and
  - g. Whether Plaintiff and Class Members are entitled to injunctive relief.

**33. Typicality – Federal Rule of Civil Procedure 23(a)(3).** The claims of the named Plaintiff are typical of the claims of other Members of the Classes.

1 All Members of the Classes were comparably injured by Defendant's conduct  
2 described above, and there are no defenses available to Defendant that are unique  
3 to Plaintiff or any particular members of the Classes.  
4

5       **34. Adequacy – Federal Rule of Civil Procedure 23(a)(4).** Plaintiff will  
6 fairly and adequately represent and protect the interests of the members of the  
7 putative Classes. Plaintiff has retained counsel with substantial experience in  
8 handling complex class action litigation, including complex questions that arise in  
9 this type of consumer protection litigation. Further, Plaintiff and her counsel are  
10 committed to the vigorous prosecution of this action. Plaintiff does not have any  
11 conflicts of interest or interests adverse to those of putative Classes.  
12

13       **35. Insufficiency of Separate Actions – Federal Rule of Civil  
14 Procedure 23(b)(1).** Absent a class action, Plaintiff and members of the Classes will  
15 continue to suffer the harm described herein, for which they would have no remedy.  
16 Even if separate actions could be brought by individual consumers, the resulting  
17 multiplicity of lawsuits would cause undue burden and expense for both the Court  
18 and the litigants, as well as create a risk of inconsistent rulings and adjudications that  
19 might be dispositive of the interests of similarly situated consumers, substantially  
20 impeding their ability to protect their interests, while establishing incompatible  
21 standards of conduct for Defendant. Accordingly, the proposed Classes satisfy the  
22 requirements of Fed. R. Civ. P. 23(b)(1).  
23

1           **36. Declaratory and Injunctive Relief – Federal Rule of Civil**

2           **Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally  
3 applicable to Plaintiff and the other Members of the Classes, thereby making  
4 appropriate final injunctive relief and declaratory relief, as described below, with  
5 respect to the Members of the Classes as a whole. In particular, Plaintiff seeks to  
6 certify the Classes to enjoin Defendant from selling or otherwise distributing spices  
7 until such time that Defendant can demonstrate to the Court's satisfaction that their  
8 spices are accurately labeled.

9           **37. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class

10          action is superior to any other available methods for the fair and efficient  
11 adjudication of the present controversy for at least the following reasons:

- 12          a. The damages suffered by each individual members of the putative  
13              Classes do not justify the burden and expense of individual  
14              prosecution of the complex and extensive litigation necessitated by  
15              Defendant's conduct;
- 16          b. Even if individual members of the Classes had the resources to pursue  
17              individual litigation, it would be unduly burdensome to the courts in  
18              which the individual litigation would proceed;
- 19          c. The claims presented in this case predominate over any questions of  
20              law or fact affecting individual members of the Classes;

- d. Individual joinder of all members of the Classes is impracticable;
- e. Absent a Class, Plaintiff and members of the putative Classes will continue to suffer harm as a result of Defendant's unlawful conduct; and
- f. This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiff and members of the putative Classes can seek redress for the harm caused by Defendant.
- g. In the alternative, the Classes may be certified for the following reasons:
  - i. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudication with respect to individual members of the Classes, which would establish incompatible standards of conduct for Defendant;
  - ii. Adjudications of claims of the individual members of the Classes against Defendant would, as a practical matter, be dispositive of the interests of other members of the putative Classes who are not parties to the adjudication and may substantially impair or

1                   impede the ability of other putative Class Members to protect  
2                   their interests; and

3                   iii. Defendant has acted or refused to act on grounds generally  
4                   applicable to the members of the putative Classes, thereby  
5                   making appropriate final and injunctive relief with respect to the  
6                   putative Classes as a whole.

7

8                   **CAUSES OF ACTION**

9

10                  **COUNT I**

11                  **Violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1, et seq.**  
12                  **(On Behalf of the Illinois Subclass)**

13                  38. Plaintiff repeats and realleges each and every allegation contained in all  
14                  the foregoing paragraphs as if fully set forth herein.

16                  39. The Illinois Consumer Fraud and Deceptive Business Practices Act (the  
17                  “ICFA”), 815 ILCS 505/1, et seq., prohibits the use of unfair or deceptive business  
18                  practices in the conduct of trade or commerce. The ICFA is to be liberally construed  
19                  to effectuate its purpose.

21                  40. Plaintiff and other members of the Illinois Sub-Class, as purchasers of  
22                  the Spices, are consumers within the meaning of the ICFA given that Defendant’s  
23                  business activities involve trade or commerce, are addressed to the market generally  
24                  and otherwise implicate consumer protection concerns.

1       41. Defendant's conduct in misrepresenting the benefits of its Spices  
2 constitute the act, use and employment of deception, fraud, false pretenses, false  
3 promises, misrepresentation, and unfair practices in the conduct of Defendant's trade  
4 or commerce.

5       42. Defendant also knowingly concealed, suppressed, and consciously  
6 omitted material facts to Plaintiff and other members of the Illinois Sub-Class  
7 knowing that consumers would rely on the advertisements and packaging and  
8 Defendant's uniform representations to purchase the Spices.

9       43. Plaintiff and the other Illinois Sub-Class Members reasonably relied  
10 upon Defendant's representation that the Spices was safe for personal use and, due  
11 to Defendant's omission, Plaintiffs relied on Defendant's labeling to conclude that  
12 the Product was not contaminated with any dangerous substance, including heavy  
13 metals.

14       44. Defendant's conduct, as described herein, took place within the State  
15 of Illinois and constitute unfair or deceptive acts or practices in the course of trade  
16 and commerce, in violation of 815 ICFA 505/1, et seq.

17       45. Defendant violated the ICFA by representing that the Spices has  
18 characteristics or benefits that it does not have. 815 ILCS § 505/2; 815 ILCS §  
19 510/2(7).

1       46. Defendant advertised the Spices with intent not to sell it as advertised,  
2 in violation of 815 ILCS § 505/2 and 815 ILCS § 510/2(9).

3       47. Defendant engaged in fraudulent and/or deceptive conduct which  
4 creates a likelihood of confusion or of misunderstanding in violation of 815 ILCS §  
5 505/2; 815 ILCS § 510/2(3).

6       48. Defendant engaged in misleading and deceptive advertising that  
7 represented that the Spices were safe. Defendant chose to label the Spices in this  
8 way to impact consumer choices and gain market dominance, as it is aware that all  
9 consumers who purchased the Spices were exposed to and would be impacted by its  
10 omission and would reasonably believe that the Spices was safe for personal use and  
11 did not contain any dangerous contaminants, including heavy metals. However, the  
12 Product is not safe, as it is contaminated with heavy metals.

13       49. Defendant intended that Plaintiff and each of the other Illinois Sub-  
14 Class Members would reasonably rely upon the misrepresentations, misleading  
15 characterizations, warranties and material omissions concerning the true nature of  
16 the Spices.

17       50. Defendant's misrepresentations, concealment, omissions, and other  
18 deceptive conduct were likely to deceive and cause misunderstanding and/or in fact  
19 caused Plaintiff and each of the other Illinois Sub-Class Members to be deceived  
20 about the true nature of the Spices.

51. Plaintiff and Class Members have been damaged as a proximate result of Defendant's violations of the ICFA and have suffered damages as a direct and proximate result of purchasing the Spices.

52. As a direct and proximate result of Defendant's violations of the ICFA, as set forth above, Plaintiff and the Illinois Sub-Class Members have suffered ascertainable loss of money caused by Defendant's misrepresentations.

53. Had they been aware of the true nature of the Spices, Plaintiff and Class Members either would have paid less for the Product or would not have purchased it at all.

54. Plaintiff and the Illinois Sub-Class Members are therefore entitled to relief, including restitution, actual damages, treble damages, punitive damages, costs and attorney's fees, under sections 815 ILCS 505/10a of the ICFA. Plaintiff and Class Members are also entitled to injunctive relief, seeking an order enjoining Defendant's unfair and/or deceptive acts or practices.

**COUNT II**  
**Fraud**  
**(On Behalf of the Nationwide and/or  
Illinois Sub-Class)**

55. Plaintiff, individually and on behalf of the National Class, repeats and re-alleges all previously alleged paragraphs, as if fully alleged herein.

56. Rule 9(b) of the Federal Rules of Civil Procedure provides that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances

1 constituting fraud or mistake.” To the extent necessary, as detailed in the paragraphs  
2 above and below, Plaintiff has satisfied the requirements of Rule 9(b) by establishing  
3 the following elements with sufficient particularity:  
4

- 5       a. **WHO:** Defendant made material misrepresentations and/or omissions  
6                   of fact in its labeling and marketing of the Spices by misrepresenting  
7                   those Spices’ composition and/or omitting the presence of heavy  
8                   metals.  
9
- 10      b. **WHAT:** Defendant’s conduct here was and continues to be fraudulent  
11                  because it has the effect of deceiving consumers into believing that  
12                  the Spices do not contain heavy metals. Defendant omitted from  
13                  Plaintiff and Class Members that the Spices contain heavy metals.  
14                  Defendant knew or should have known this information is material to  
15                  all reasonable consumers and impacts consumers’ purchasing  
16                  decisions. Yet, Defendant has and continues to represent that the  
17                  Spices are of a composition not containing heavy metals when they  
18                  do contain heavy metals, and has omitted from the Spices’ labeling  
19                  the fact that they contain heavy metals.  
20
- 21      c. **WHEN:** Defendant made material misrepresentations and/or  
22                  omissions detailed herein, including that the Spices do not contain  
23                  heavy metals, continuously throughout the applicable Class period(s).  
24

- 1           d. **WHERE:** Defendant's material misrepresentations and omissions,  
2           that the Spices do not contain heavy metals, were made on the front  
3           labeling and packaging of the Products and throughout Defendant's  
4           advertising. Defendant's representations and omissions were viewed  
5           by every purchaser, including Plaintiff, at the point of sale in every  
6           transaction. The Spices are sold worldwide in brick-and-mortar stores  
7           and online store nationwide.  
8  
9           e. **HOW:** Defendant omitted from the Spices' labeling the fact that they  
10          contain heavy metals. And as discussed in detail throughout this  
11          Complaint, Plaintiff and Class Members read and relied on  
12          Defendant's front-label representations and omissions before  
13          purchasing the Spices.  
14  
15          f. **WHY:** Defendant misrepresented its Spices are not containing heavy  
16          metals and omitted from the Spices' labeling the fact that they do  
17          contain heavy metals for the express purpose of inducing Plaintiff and  
18          Class Members to purchase the Spices at a substantial price premium.  
19          As such, Defendant profited by selling the misrepresented Spices to  
20          at least thousands of consumers throughout the nation.

21  
22        57. As alleged herein, Defendant made these material representations and  
23          omissions in order to induce Plaintiff and Class Members to purchase the Spices.  
24  
25  
26  
27

58. As alleged in detail herein, Defendant knew the misrepresentations and omissions regarding the Spices were false and misleading but nevertheless made such representations and omissions through the marketing, advertising and on the Spices' labeling. In reliance on these representations and omissions, Plaintiff and Class Members were induced to, and did, pay monies to purchase the Spices.

59. Had Plaintiff and the Class known the truth about the Spices, they would not have purchased the Spices.

60. As a proximate result of the fraudulent conduct of Defendant, Plaintiff and Class Members paid monies to Defendant, through its regular retail sales channels, to which Defendant is not entitled, and have been damaged in an amount to be proven at trial.

**COUNT III**  
**Unjust Enrichment**  
**(On Behalf of the Nationwide and/or  
Illinois Sub-Class)**

61. Plaintiff, individually and on behalf of the National Class, repeats and realleges all previously alleged paragraphs, as if fully alleged herein.

62. Plaintiff and the putative Class Members conferred a benefit on Defendant when they purchased the Spices, of which Defendant had knowledge. By its wrongful acts and omissions described herein, including selling the Spices, which contain heavy metals, including arsenic, cadmium, and lead at levels above what is

1 considered safe for children and adults, Defendant was unjustly enriched at the  
2 expense of Plaintiff and the putative Class Members. Plaintiff's detriment and  
3 Defendant's enrichment were related to and flowed from the wrongful conduct  
4 challenged in this Complaint.

5       63. Defendant has profited from its unlawful, unfair, misleading, and  
6 deceptive practices at the expense of Plaintiff and the putative Class Members under  
7 circumstances in which it would be unjust for Defendant to be permitted to retain  
8 the benefit. It would be inequitable for Defendant to retain the profits, benefits, and  
9 other compensation obtained from their wrongful conduct as described herein in  
10 connection with selling the Spices.

11       64. Defendant has been unjustly enriched in retaining the revenues derived  
12 from the proposed Class Members' purchases of the Spices, which retention of such  
13 revenues under these circumstances is unjust and inequitable because Defendant  
14 manufactured defective Spices, and misrepresented the nature of the Spices,  
15 misrepresented their composition, and knowingly marketed and promoted dangerous  
16 and defective Spices, which caused injuries to Plaintiff and Members of the proposed  
17 Class because they would not have purchased the Spices based on the same  
18 representations if the true facts concerning the Spices had been known.

19       65. Plaintiff and the putative Class Members have been damaged as a direct  
20 and proximate result of Defendant's unjust enrichment because they would not have  
21

purchased the Spices on the same terms or for the same price had they known the true nature of the Spices and the misstatements regarding what the Spices were and what they contained.

66. Plaintiff and the putative Class Members are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant.

67. When required, Plaintiff and the putative Class Members are in privity with Defendant because Defendant's sale of the Spices was either direct or through authorized sellers. Purchasing through authorized sellers is sufficient to create such privity because such authorized sellers are Defendant's agents for the purpose of the sale of the Spices.

68. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the putative Class Members are entitled to restitution of, disgorgement of, and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendant for its inequitable and unlawful conduct.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated members of the Classes, pray for relief and judgment, including entry of an order:

- 1 A. Declaring that this action is properly maintained as a class action,
- 2 certifying the proposed Class(es), appointing Plaintiff as Class
- 3 Representative and appointing Plaintiff's counsel as Class Counsel;
- 4
- 5 B. Directing that Defendant bear the costs of any notice sent to the
- 6 Class(es);
- 7
- 8 C. Declaring that Defendant must disgorge, for the benefit of the
- 9 Class(es), all or part of the ill-gotten profits they received from the
- 10 sale of the Products, or order Defendant to make full restitution to
- 11 Plaintiff and the members of the Class(es);
- 12
- 13 D. Awarding restitution and other appropriate equitable relief;
- 14
- 15 E. Granting an injunction against Defendant to enjoin it from
- 16 conducting its business through the unlawful, unfair and fraudulent
- 17 acts or practices set forth herein;
- 18
- 19 F. Granting an Order requiring Defendant to fully and appropriately
- 20 recall the Spices, to remove the claims on its website and elsewhere,
- 21 including the material representations and/or omissions that the
- 22 Spices do not contain heavy metals;
- 23
- 24 G. Ordering a jury trial and damages according to proof;
- 25
- 26
- 27
- 28

- H. Awarding Plaintiff and members of the Class(es) statutory damages, as provided by the applicable state consumer protection statutes invoked above;
- I. Enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;
- J. Awarding attorneys' fees and litigation costs to Plaintiff and members of the Class(es);
- K. Awarding civil penalties, prejudgment interest and punitive damages as permitted by law; and
- L. Ordering such other and further relief as the Court deems just and proper.

## JURY DEMAND

Plaintiff demands a trial by jury of all claims in this Complaint so triable.

Dated: January 25, 2022

Respectfully submitted,

/s/ Jonathan Shub  
Jonathan Shub (SBN 237708)  
Kevin Laukaitis\*  
**SHUB LAW FIRM LLC**  
134 Kings Highway E, 2nd Floor  
Haddonfield, NJ 08033  
T: 856-772-7200  
F: 856-210-9088  
[jshub@shublawyers.com](mailto:jshub@shublawyers.com)

1                   klaukaitis@shublawyers.com

2                   Gary E. Mason\*  
3                   **MASON LIETZ & KLINGER, LLP**  
4                   5101 Wisconsin Avenue NW, Suite 305  
5                   Washington, DC 20016  
6                   Tel: 202-640-1168  
7                   Fax: 202-429-2294  
8                   gmoson@masonllp.com

9                   Gary M. Klinger\*  
10                  **MASON LIETZ & KLINGER, LLP**  
11                  227 W. Monroe Street, Suite 2100  
12                  Chicago, Illinois 60606  
13                  Tel: 202-640-1168  
14                  Fax: 202-429-2294  
15                  gklinger@masonllp.com

16                  \**Pro Hac Vice Application Forthcoming*

17                  *Attorneys for Plaintiff and Putative Class*  
18                  *Members*

**CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)**

I, Jonathan Shub, declare as follows:

1. I am an attorney at law licensed to practice in the State of California  
2 and a member of the bar of this Court. I am an attorney at Shub Law Firm LLC,  
3 counsel of record for Plaintiff in this action. I have personal knowledge of the facts  
4 set forth in this declaration and, if called as a witness, I could and would competently  
5 testify thereto under oath.

6  
7  
8  
9  
10 2. The Complaint filed in this action is filed in the proper place for trial  
11 under Civil Code Section 1780(d) in that a substantial portion of the events alleged  
12 in the Complaint occurred in the Northern District of California.

13  
14 I declare under the penalty of perjury under the laws of the State of California  
15 and the United States that the foregoing is true and correct and that this declaration  
16 was executed at Haddonfield, New Jersey this 25<sup>th</sup> day of January, 2022.  
17  
18

*/s/ Jonathan Shub*  
Jonathan Shub